



POLICE DEPARTMENT

June 29, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Michael Calvente
Tax Registry No. 920073
9 Precinct
Disciplinary Case No. 2010-2739

The above-named member of the Department appeared before the Court on May 3, 2012, charged with the following:

1. Said Police Officer Michael Calvente, while assigned to Transit Bureau District #11, on or about February 6, 2009, at about 0308 hours, wrongfully did fail and neglect to notify the radio dispatcher at the beginning of said Police Officer's meal period of the location where said meal was to be taken, as required.

I.O. 37, Series 2008, Page 1, Paragraph 2 REVISION TO PATROL GUIDE 212-02, "MEAL PERIOD" AND PATROL GUIDE 203-06, "PERFORMANCE ON DUTY PROHIBITED CONDUCT"

2. Said Police Officer Michael Calvente, while assigned to Transit Bureau District #11, on or about February 6, 2009, at about 0308 hours, did engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, having been queried by the radio dispatcher twice regarding the location said Police Officer was taking his meal, said Police Officer wrongfully provided false and misleading information to said radio dispatcher regarding the location of said meal.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

3. Said Police Officer Michael Calvente, while assigned to Transit Bureau District #11, on or about February 6, 2009, wrongfully did fail and neglect to ma[k]e an entry in his activity log prior to leaving his assigned post, including his meal location address, and again upon returning to his assigned post, as required.

I.O. 37, Series 2008, Page 1, Paragraph 4 REVISION TO PATROL GUIDE 212-02,
“MEAL PERIOD” AND PATROL GUIDE
203-06, “PERFORMANCE ON DUTY
PROHIBITED CONDUCT”

The Department was represented by David Green, Esq., Department Advocate’s Office.

Respondent was represented by John Tynan, Esq., Worth, Longworth, & London, LLP.

Respondent, through counsel, entered a plea of Not Guilty to Specification Nos. 2 and 3.

The Department dismissed Specification No. 1 before trial. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner’s review.

DECISION

Respondent is found Guilty of Specification Nos. 2 and 3. Specification No. 1 is dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department’s Case

The Department called Lieutenant Nelson Tolentino as a witness.

Lieutenant Nelson Tolentino

Tolentino was assigned to the Transit Bureau Investigations Unit. On February 6, 2009, he was working with Captain Rosendo Velez on the midnight tour. Velez was the operator and Tolentino was the recorder. They were conducting an investigation that arose out of a tip from

workers at the Concourse subway yards on the 4 line in the Bronx. The workers reported that a Department "car" was present inside the yards for long periods of time and was not conducting patrol. The tip led to a broader investigation into the patrol practices within Transit District 11 (TD 11), as that command had experienced a rise in crime.

Tolentino testified that at approximately 0310 hours, he overheard a radio transmission from sector Adam within TD 11. Respondent and Police Officer Alexander Mercado were assigned to that sector in a marked patrol vehicle. Respondent was the operator and Mercado was the recorder.

The unit transmitted that they were taking their meal "in sector." Tolentino stated that this was an inappropriate explanation because members were supposed to indicate, if taking meal in the field, the closest intersection to where their vehicle is stopped. This is so the dispatcher can know where the police resources are.

Tolentino called the dispatcher and instructed her to contact sector Adam and ascertain the "true location" of where they were taking meal. She did so over the radio, and the sector responded (in sum and substance), "Bedford on the 4 line." The sector also asked the dispatcher, "you know, who wanted to know their location" (see Department Exhibit [DX] 1 & 1a, recording & transcript of transmission). Tolentino noted that as a street, Bedford Park Boulevard ran from Lehman College to the New York Botanical Garden, "a pretty long stretch."

Tolentino testified that he and Velez went to the Bedford Park Boulevard Lehman College station on the 4 line of the subway to look for sector Adam. Tolentino and Velez searched the station complex itself. There was one entrance to the station leading to two elevated platforms. They spoke to the booth clerk and looked in a break room and a room used to observe the turnstile area surreptitiously. They looked for the sector vehicle outside as well.

Tolentino and Velez also searched the vicinity of the station, including the Lehman College area and the entirety of Bedford Park Boulevard itself.

There was only one restaurant, a diner, "near" the station. It was "right across" from the station. Tolentino and Velez searched in that vicinity as well and did not see any marked patrol vehicles.

Tolentino and Velez spent approximately two hours looking for the sector without success.

In an official Department interview, Respondent was unable to state his whereabouts during his meal break on February 6, 2009. His activity log entry from that date (see DX 3) showed him taking meal at 0308 hours, but not the "exact location." The activity log was also missing an indication of who the operator and recorder were, and who his partner was.

On cross examination, Tolentino stated that it was possible that the tip from the transit workers came in days, but not weeks, before February 6, 2009. The workers did not identify the vehicle by number or see that it belonged to TD 11. Tolentino personally did not speak to the workers and did not know if any other investigator did. Another investigatory team was stationed at the Concourse yards but did not "see any car there."

Tolentino stated that TD 11, in terms of vehicles, generally had one sergeant and two other vehicles assigned during the first platoon. Occasionally there was just one sergeant and one other vehicle.

Tolentino and Velez began their investigation at approximately 0040 hours. At no point during the night did he see any transit district vehicle in a place where it should not have been.

Tolentino did not review whether TD 11 made any arrests or summonses during the tour in question. He did not know how many jobs were responded to. There were no allegations

from transit workers that there was a lack of police presence in the stations covered by TD 11.

Tolentino did not know of any incident during the tour to which officers did not respond. He did not know of any open complaint reports “because there was no arrest or no action taken by the police” during the tour.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent testified that he was originally assigned to the Transit Bureau Bronx Task Force. He was subsequently transferred to TD 11. At the time of trial, however, he was assigned to the 9 Precinct, on full duty status.

Respondent stated on February 6, 2009, he was assigned to TD 11. He worked a midnight tour that day and was assigned with Mercado to sector Adam. They were the only sector that night; there usually were two. There were approximately 20 stations within the coverage area.

Respondent did not make any arrests or issue any summonses during the tour, but did transport one prisoner, so someone else might have had an arrest. A captain signed Respondent's activity log at 0130 hours, shortly after the transport [it is possible that the signature is that of Velez]. Tolentino was not present when the captain scratched Respondent's book. The patrol supervisor scratched Respondent's book at 0135, at 149th Street and Grand Concourse. Respondent had no further contact with supervisors after that time.

Respondent did not recall where he took meal that tour, but he was with Mercado while doing so. He denied leaving his area of assignment at any time during the tour to avoid doing police work. He did not fail to respond to any job assignment.

Respondent noted that Mercado was offered a command discipline concerning this incident. Respondent, however, was not.

On cross examination, Respondent stated that he responded to the Concourse yards occasionally and spoke with a transit worker performing security work. The inspection was to see if everything was all right. He did so during the tour in question at 0432 hours.

Respondent testified that his sector performed a directed patrol at one station at 0038 hours. They also responded to a radio run for a disorderly person at 0134. The individual was removed by Emergency Medical Services (EMS), conscious and alert, at 0224.

FINDINGS AND ANALYSIS

Introduction

The instant matter arose after a cooping investigation by the Transit Bureau Investigations Unit. Workers at the Concourse subway yards on the 4 line in the Bronx reported that a police vehicle was entering the yard and staying for long periods of time without actually conducting patrol. The yard was within the confines of Transit District 11.

On February 6, 2009, the investigator, Tolentino, was investigating the cooping allegation on the 12x8 tour, along with Captain Rosendo Velez. While monitoring the radio, Tolentino heard sector Adam, to which Respondent and Police Officer Alexander Mercado were assigned. Mercado said that they were going to take their meal "in sector." Respondent was the operator and Mercado was the recorder.

Tolentino called the dispatcher and instructed her to contact sector Adam and ascertain more specifics of where they were taking meal, as a dispatcher needed to know precise locations of police resources. The dispatcher called the sector, and they responded, in sum and substance, "Bedford on the 4 line." The sector also asked who wanted to know.

Their suspicions aroused, Tolentino and Velez canvassed the area of the station. They entered the station itself, which was elevated and led to two platforms. They examined a break room and an observation room. They drove around the blocks surrounding the station. They looked in the area of the only open restaurant near the station. Nowhere did they find Respondent or Mercado.

Specification No. 2

The second specification charges that Respondent wrongfully provided false and misleading information to the radio dispatcher regarding the location where he was taking his meal, after having been asked twice. Respondent testified that he did not recall where he took his meal that tour, as his activity log had no indication. Tolentino's testimony of a wide and complete canvass in and around the Bedford Park station established that Respondent did not take his meal there, and Respondent essentially conceded as much on summation.

Although the instant case arose out of an investigation into cooping, Respondent is not charged with cooping. He testified, using his activity log, that he took various kinds of police action during the tour in question, including transporting a prisoner and removing a disorderly person. Two supervisors signed his book. None of this, however, negates the charge that he did not take his meal at the Bedford Park station when he told the dispatcher that was where he

would be. He is only charged in this specification with giving false and misleading information as to his meal location, and of that he is found Guilty.

Specification No. 3

The third specification charges that Respondent failed to make an entry in his activity log prior to leaving his assigned post, indicating where he was taking meal, and another entry upon returning to his assignment. Such information is required by Interim Order 37, Series 2008, para. 4. It is not disputed that Respondent failed to make such entries (see DX 3, activity log entries). Therefore, he is found Guilty of Specification No. 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on December 8, 1997. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of telling the radio dispatcher a false and misleading location as to where he was taking his meal. Additionally, he failed to indicate in his activity log the actual location where he was taking his meal.

The Department recommended a penalty of the forfeiture of 10 vacation days. The penalty should be higher. The inaccurate information given by Respondent's sector as to their meal location caused two supervisors to conduct a two hour search for the officers. The Court takes judicial notice of the fact that on October 25, 2011, Respondent's partner, Mercado pleaded

Guilty to charges and specifications in this matter in exchange for a penalty of 15 vacation days (see Case No. 2010-2743). On May 8, 2012, the Police Commissioner disapproved the disposition and directed that Mercado forfeit 20 vacation days. It should be noted, however, that Mercado had pleaded Guilty to additional and distinct misconduct. Mercado and Respondent have distinct personnel records as well.

In light of Respondent's otherwise good record, the Court recommends that he forfeit 15 vacation days as a penalty in this matter.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED
DEC 10 2012

RAYMOND W. KELLY
POLICE COMMISSIONER

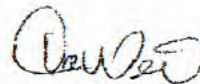
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MICHAEL CALVENTE
TAX REGISTRY NO. 920073
DISCIPLINARY CASE NO. 2010-2739

In 2009 and 2011, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2008. He has been awarded two medals for Excellent Police Duty. [REDACTED]

[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials